

# **ARE INTERNATIONAL FRAMEWORK AGREEMENTS A PATH TO CORPORATE SOCIAL RESPONSIBILITY?**

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## **I. INTRODUCTION**

As the current wave of programs espousing corporate social responsibility continues to grow, it seems as if almost every multinational corporation in every industry has adopted some sort of program to address this issue. A simple Google search for “corporate social responsibility” results in over 16 million hits. While efforts to develop corporate social responsibility continue at a frantic pace in many areas of corporate policymaking, one area of particular interest is employment relations.

It should not be surprising that numerous corporate social responsibility efforts are focused on the employment relationship. A number of companies based in the United States have received widespread negative attention for questionable employment practices. These practices are frequently associated with the outsourcing of work to countries where internationally recognized labor standards are not recognized. As publicity concerning these cases spreads, some companies have responded by developing corporate social responsibility programs known generically as corporate codes of conduct. While much time and effort has been devoted to these programs, few of them are successful. Needless to say, this should not be surprising.

First, many corporate codes of conduct lack credibility. All but a few of them are initiated, formulated, and finalized by administrators at the highest levels of the enterprise, thereby omitting input from the very people they are intended to benefit. Second, these codes frequently lack real substance and fail to address vital elements that concern basic labor

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standards and essential procedures for implementation and enforcement. Together, these inadequacies have resulted in widespread criticism.

Representatives of organized labor are especially critical of corporate codes of conduct. In general, they view these codes as mere public relations ploys that mislead conscious-laden consumers who would otherwise boycott goods made or handled by exploited workers. Furthermore, representatives of organized labor contend that corporate codes of conduct also distract and confuse both workers and national policy makers.<sup>1</sup>

In response to the growing use of codes, some representatives of organized labor have begun to utilize what are known as International Framework Agreements (IFAs). In theory, IFAs differ from unilaterally implemented codes in at least two general ways: (1) they are a product of negotiations between organized labor and the company, thereby including the workers' perspective; and (2) they serve as an attempt to remedy the content and procedural deficiencies associated with codes.

Six years ago, when this author examined voluntary corporate codes of conduct, the development of IFAs was in its early stage. The author noted that,

With respect to codes that are established in cooperation with worker representatives, this article acknowledges that the number of examples in this category is so exceedingly small—occurring in only a handful of trade union instances—that it is difficult to reach any conclusion about their merits. Further difficulties exist given that these codes are, by and large, in their infancy and in most cases not fully developed. Consequently, it is the conclusion of this article that while they represent a positive step forward in eliminating some of the more serious flaws of unilaterally implemented codes, given their novelty, it is difficult to form any significant conclusion about their merits.<sup>2</sup>

Since that article was published, roughly fifty IFAs have been executed.<sup>3</sup> Since IFAs represent a new and growing form of corporate social responsibility, it is necessary to reexamine them in their most current context.<sup>4</sup> This Article undertakes such a reexamination by addressing

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1. See Owen E. Herrnstadt, *Voluntary Corporate Codes of Conduct: What is Missing?*, 16 LAB. LAW. 349, 350 (2001) [hereinafter *Voluntary Codes*] (noting that corporate codes of conduct are criticized for “distract[ing] and confus[ing]” consumers, workers, and policymakers).

2. *Id.* at 351.

3. These IFAs have been signed by many companies and works councils, unions, and Global Union Federations (GUFs). A list of them is attached in Table I. GUFs are federations of unions that represent workers throughout the world. They are grouped by specific industry, such as metalworkers and transport workers.

4. For the purposes of this Article, only IFAs from the GUF's IMF and BWI were

whether IFAs can pave a path to corporate social responsibility. In order to answer this question, two different but related topics are reviewed: (1) the genesis of IFAs; and (2) IFAs in theory and in practice. The second topic includes a detailed description of the essential elements that are crucial to the success of an IFA.

## II. IFAS: THE GENESIS

IFAs were developed by organized labor as a response to the growing trend of corporate unilateral adoption of codes of conduct. Attacked by labor organizations as empty gestures aimed at satisfying conscious-laden consumers, IFAs were criticized for “dilut[ing] and divert[ing] the very pressures for empowering workers and raising standards . . . .”<sup>5</sup>

The Building and Woodworkers’ International (BWI or IFBWW) is one of the Global Union Federations (GUFs) that pioneered the IFA. It recognized that unilaterally implemented codes were often used for “marketing purposes” and “were a response to negative publicity related to exploitation and abusive labour practices in the production of famous brand name goods.”<sup>6</sup> Similarly, IG Metall, a giant metalworkers’ union explained that multinational companies started to adopt codes of conduct in response to public attack “on account of their behaviour towards workers. . . .”<sup>7</sup> As with BWI, IG Metall criticized these codes as “serv[ing] primarily as PR or marketing tools.”<sup>8</sup>

The genesis of IFAs was not only a response to the failure of codes; it was also the result of recognition that internationally recognized labor standards had become generally accepted in the international arena. The International Labor Organization’s work on conventions and recommendations, including its more recent Declaration on Fundamental Principles and Rights at Work, have served as a basis for this acceptance.

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reviewed; see Table 2. These GUF’s have been extremely active in negotiating IFAs in the last few years acting as signatories in over half of all IFAs (the IMF has signed 16 and BWI has signed 12) that have been negotiated. The ICEM and UNI are other GUFs that have also been very active in negotiating IFAs.

5. *Voluntary Codes*, *supra* note 1 at 350, (citing Alan Howard, *Why Unions Can’t Support the Apparel Industry Sweatshop Code*, WORKING USA, Jul/Aug. 1999 at 49).

6. INTERNATIONAL FEDERATION OF BUILDING AND WOOD WORKERS, IFBWW EXPERIENCES WITH GLOBAL COMPANY AGREEMENT, at 2 (Feb. 2004) *available at* <http://www.fitbb.org/index.cfm?l=2&n=11> [hereinafter IFBWW EXPERIENCES]. The International Federation of Building and Wood Workers (IFBWW) is a GUF that represents 287 trade unions in the construction and wood working industries. *Id.* at 1. It became part of the new GUF, Building and Woodworkers International (BWI), in 2005.

7. STEFAN RÜB, SOCIAL MINIMUM STANDARDS IN MULTINATIONAL GROUPS: ARGUMENTS AND PRACTICAL HELP TO INITIATE, NEGOTIATE AND IMPLEMENT AN INTERNATIONAL FRAMEWORK AGREEMENT 5 (IG Metall, June 2004).

8. *Id.*

The OECD Guidelines for Multinational Enterprises and the formation of other international institutions that address these issues, lend further support for broader acceptance of internationally recognized labor standards.

Framework agreements were also developed in response to the inadequacy of national laws in satisfying international labor standards. This dissatisfaction spans from countries such as the United States and Australia to Columbia, Burma, and China. Framework agreements served as an attempt to compel companies to exceed their obligations under national laws.

IFAs present a vehicle for determining a corporation's true commitment to corporate social responsibility, while providing effective means for achieving that commitment. Based on these distinguishing factors, IFAs are, at least in theory, much different from corporate codes of conduct. In contrast to corporate codes of conduct, which emanate from unilateral decisions made by upper levels of management, IFAs are based around the European model of social dialogue. According to the IFBWW, IFAs "constitute a formal recognition of social partnership at the global level" by providing "a global framework for protecting trade union rights and encouraging social dialogue and collective bargaining."<sup>9</sup>

The overall objective of an IFA that emanates from social dialogue is to create corporate policies that are based on mutually agreed to principles of corporate social responsibility. According to Amicus the Union, "if done properly, [IFAs] offer a route for protecting and raising labor standards in multinational companies."<sup>10</sup> IG Metall agrees, noting that "[IFAs] are an instrument developed by the unions as a means of securing fundamental workers' rights at all company's production sites around the world."<sup>11</sup> Similarly, the International Metalworkers' Federation (IMF) explains that an IFA "is a global instrument with the purpose of ensuring fundamental workers' rights . . . ."<sup>12</sup>

Another common purpose of IFAs is to prevent corporations from pitting workers in one country against workers in other countries. This intention, as IG Metall explains, aims to

commit groups to observe minimum social standards during the manufacture of their products, help to improve the living and working conditions of workers and their families in the

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9. IFBWW EXPERIENCES, *supra* note 6, at 3.

10. Amicus the Union, International Framework Agreements: An Amicus Position Paper, at 3 (on file with author) (Amicus the Union is now known as Unite the Union).

11. RÜB, *supra* note 7, at 5.

12. INT'L METALWORKERS' FED'N, THE POWER OF FRAMEWORK AGREEMENTS 3 (2003), available at <http://www.imfmetal.org/main/files/ENG2.pdf> (The IMF is a GUF that represents workers in the metal industries).

developing and newly industrialised countries. They place an absolute minimum limit on attempts to gain a competitive advantage by undercutting social standards and reduce the pressure of unfair competition.<sup>13</sup>

While representing a new tool for achieving corporate responsibility, IFAs at this time are still almost exclusively limited to European companies and are the products of European negotiations. Of the roughly fifty IFAs that have been executed, only a small handful have been signed with non-European-based companies.<sup>14</sup> A frequent question posed by European trade unionists is why IFAs are not being negotiated outside of Europe. "The absence of IFAs with companies based outside of Europe has been brought up repeatedly."<sup>15</sup>

The answer to this question has four different but related reasons. First, European experience fosters a culture of dialogue. After all, the move towards works councils, supervisory boards, co-determination, and so forth is predicated on a basis of "dialogue" as opposed to one of an adversarial nature. It seems only natural then, that discussion over new mechanisms for achieving corporate social responsibility would emanate from this type of industrial relations system. Second, in contrast, in the United States there is no basis for social dialogue. Indeed, under the structure of U.S. labor law, IFAs may not, in general, be considered to constitute a mandatory subject for bargaining, and therefore, it is difficult to "compel" a company to negotiate them. Third, in the United States, many employers are openly hostile to unions; and, for the most part, the legal institution of social dialogue does not exist. And fourth, U.S. workers and their unions do not share certain protections enjoyed by many of their European counterparts concerning health care, retirement security, job security and benefits. These kinds of issues presumably take priority for many U.S. workers, over IFAs, in discussions with an employer.

In view of the aforementioned, in order for an IFA to be relevant for workers outside of Europe where social dialogue does not exist, like those in the U.S., the IFA must serve as a standalone document. This is in sharp contrast to much of Europe where understandings and discussions often take place via social dialogue. These activities may serve to augment the written IFA.

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13. RÜB, *supra* note 7, at 4.

14. See INT'L METALWORKERS' FED'N, ALL FRAMEWORK AGREEMENTS (June 14, 2006), <http://www.imfmetal.org/main/index.cfm?n=47&l=2&c=10266> (listing all international framework agreements concluded between Transnational Companies and Global Union Federations).

15. INT'L METALWORKERS' FED'N, BACKGROUND TO INTERNATIONAL FRAMEWORK AGREEMENTS IN THE IMF 14 (2006), [http://www.imfmetal.org/main/files/06081513541679/Background\\_document\\_english-final.pdf](http://www.imfmetal.org/main/files/06081513541679/Background_document_english-final.pdf).

If IFAs are to succeed where Codes have failed, they must be available to workers anywhere in the world and they must be effective for achieving the, so far illusive, corporate social responsibility. Their success depends on their ability to address certain essential elements, which will make them relevant to workers outside Europe (as well as inside Europe). The next section of this paper reviews the importance of these elements and explains what they include.

### III. IFAS IN THEORY AND IN PRACTICE

In order for any IFA to be successful, it must satisfy four essential elements. (Not coincidentally, they are also the same elements that are required to ensure the success of any Code.) First, coverage: IFAs must cover the entire enterprise as well as *all* related entities of the enterprise. Second, content: IFAs must, at a minimum, explicitly include International Labor Organization (ILO) labor standards, referenced directly to the appropriate Conventions. Third, implementation: IFAs must be effectively implemented through communication and education; and fourth, enforcement: IFAs must be enforced in a transparent, meaningful, and effective manner.

#### *A. IFAs Must Cover the Entire Enterprise As Well As All Related Entities of the Enterprise.*

International Framework Agreements must cover the *entire* enterprise, including subsidiaries, suppliers, and joint ventures. This broad coverage is essential for the success of any program. If an IFA is limited to a company's direct employees, the lack of coverage for employees of its suppliers will be a glaring omission and raise doubts about its commitment to an IFA. It will also lead to the creation of two classes of workers in the enterprise: one group that enjoys the benefits bestowed upon it by the IFA, and another that does not.

The fact that companies are accelerating their use of outsourcing heightens this concern. It is not difficult to imagine the skepticism of an outsourced employee (as well as the general public) who is not covered by an IFA, particularly when working alongside an employee of the company who is covered by the IFA. Such a situation is untenable and its mere possibility raises serious questions regarding the integrity of the IFA. It raises the basic question, "how can a corporation claim to be socially responsible if its IFA does not cover the entire enterprise?"

The importance of broad coverage for IFAs is reaffirmed by some GUFs, who are actively pursuing IFAs, like the IMF. The guidelines of the

IMF, which were developed several years ago, explain the importance for such broad coverage:

Economic globalisation is lowering barriers to the movement of goods, services and capital, and allowing transnational businesses to create global production and distribution networks . . . .

. . . . [T]he conditions under which its products or services are made and that these responsibilities extend to all workers producing products or services for [the] [company] whether or not they are employees of [the] [company].<sup>16</sup>

The IMF model provides detailed guidelines requiring:

[C]ontractors, their sub-contractors, principal suppliers, and licensees (franchise holders) to provide the conditions and observe the standards of the following agreement when producing or distributing products or components of products for [the] [company]. [Company] will, prior to placing orders with principle suppliers, engaging contractors and subcontractors or granting licensees, assess whether the provisions of this Agreement will be met.<sup>17</sup>

The IMF agreement also carefully defines the meaning of “subcontractor” as well as what constitutes a “supplier, a licensee and a franchise holder.”<sup>18</sup> Other GUFs also stress the importance of covering subcontractors.<sup>19</sup>

Obtaining agreement for broad coverage in IFAs is not easy since many companies reject demands for broad coverage arguing that they cannot be held accountable for the treatment of employees over which they have no control. Current IFAs generally fall into one of three categories regarding second and third party coverage: (1) coverage is objectively clear; (2) coverage is ambiguous, often limited to non-mandatory phrases like “encourage,” “support,” or “urge”; or (3) provisions regarding coverage are lacking in their entirety.

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16. INT’L METALWORKERS’ FED’N, IMF MODEL INTERNATIONAL FRAMEWORK AGREEMENT 1 (2005), [http://www.imfmetal.org/main/files/0505102301487/ifamodel\\_total\\_english.pdf](http://www.imfmetal.org/main/files/0505102301487/ifamodel_total_english.pdf).

17. *Id.*

18. *See id.* at 1-2 (defining commonly used terms for purposes of the IMF Model International Framework Agreement).

19. *See, e.g.,* INT’L FED’N OF BUILDING AND WOOD WORKERS, IFBWW MODEL FRAMEWORK AGREEMENT, <http://www.ifbww.org/index.cfm?n=191&l=2&on=7> (last visited Dec. 2, 2007) (referring to subcontractors’ obligations in two separate provisions). On November 16, 2007, BWI (successor to the IFBWW) adopted a “New BWI Model Framework agreement”. Since the new model agreement was adopted shortly before publication, it did not serve as a basis for review for this Article.

While, as mentioned, the IMF guidelines contemplate broad core coverage, very few of its IFAs clearly cover suppliers or other contractors. Of the IMF's sixteen, IFAs, only two have relatively strong language regarding suppliers. One of them, PSA Peugeot Citroen, represents perhaps the strongest language in any IFA regarding suppliers.<sup>20</sup> In that IFA, suppliers are "require[d]" to "make similar commitments with regard to their respective suppliers and subcontractors."<sup>21</sup> The Peugeot IFA also states that:

When requesting quotes from suppliers, PSA Peugeot Citroen agrees to assure that compliance with human rights . . . is a determining factor in the selection of suppliers for the panel. . . . Any failure to comply with human rights requirements will result in a warning from PSA PEUGOT CITROEN and a plan of corrective measures must be drawn up. Non-compliance with these requirements will result in sanctions including withdrawal from the supplier panel.<sup>22</sup>

The majority of the IMF's IFAs include supplier provisions that are either merely "suggestive" or simply ambiguous. The European Aeronautic Defense and Space Company (EADS) IFA is typical of the more suggestive approach. It states that EADS "expects all its suppliers to recognise and apply the principles of this framework agreement and encourages them to introduce and implement principles in their own companies."<sup>23</sup>

Several of the IMF's other IFAs reflect even weaker provisions with respect to suppliers. The Rheinmetall IFA is typical of these approaches: "Rheinmetall AG supports and expressly encourages its business partners to take into account and apply the agreed guidelines in their own corporate policy."<sup>24</sup>

Some of the IMF's IFAs address suppliers, but the provisions are so vague that it is difficult to determine what is the intent of the language. For example, Volkswagen's IFA links coverage to reflect its own "corporate

20. PSA PEUGEOT CITROEN, PSA PEUGEOT CITROEN GLOBAL FRAMEWORK AGREEMENT ON SOCIAL RESPONSIBILITY 8 (2006), [http://www.imfmetal.org/main/files/06041112011079/ifa\\_psa\\_english2006.pdf](http://www.imfmetal.org/main/files/06041112011079/ifa_psa_english2006.pdf) (expressing PSA Peugeot Citroen's commitment to promotion of fundamental human rights).

21. *Id.*

22. *Id.*

23. EUROPEAN AERONAUTIC DEFENSE AND SPACE CO., INTERNATIONAL FRAMEWORK AGREEMENT 5 (2005), [http://www.imfmetal.org/main/files/05071112175266/IFA\\_EADS\\_eng.pdf](http://www.imfmetal.org/main/files/05071112175266/IFA_EADS_eng.pdf). It also states that, "compliance with EADS standards serves as a criterion for selecting suppliers," raising the question, what exactly does "expects" mean?

24. RHEINMETALL AG, SOCIAL RESPONSIBILITY GUIDELINES AT RHEINMETALL AG (CODE OF CONDUCT) 5 (2003), [http://www.imfmetal.org/main/files/ifa\\_rheinmetall\\_english.pdf](http://www.imfmetal.org/main/files/ifa_rheinmetall_english.pdf).



policy.”<sup>25</sup> Some, including Arcelor, BMW, and Prym, merely encourage their “contractors and suppliers” to “take the agreement into consideration in their own company [policies].”<sup>26</sup> Merloni, on the other hand, only addresses “direct suppliers”, and even then, omits explicit reference to ILO Conventions 87 and 98 (concerning freedom of association and collective bargaining) in its IFA.<sup>27</sup>

To complicate matters, some of the IMF’s IFAs apply different language concerning supplier obligations, depending on which labor standard is being referenced.<sup>28</sup> For example, Renault’s IFA may qualify the coverage for suppliers depending on which internationally recognized labor standard is involved. While the agreement mandates that suppliers and service providers comply with Renault’s policies regarding child labor and forced labor, it does not specifically reference compliance for suppliers and service providers with respect to ILO standards regarding equal opportunities, salaries and wages, and employee representation.<sup>29</sup>

Other GUFs that also contain strong language in their model agreements fare much better than the IMF in obtaining broad coverage in their IFAs. Of the ten or so IFAs signed by the IFBWW, eight explicitly cover some form of suppliers.<sup>30</sup> For example, BWI’s IFA with Hochtief requires contractual partners to ensure that their subcontractors adhere to its code of conduct.<sup>31</sup> Similarly, BWI’s IFA with Impregilo S.p.A. notes that

25. VOLKSWAGEN, DECLARATION ON SOCIAL RIGHTS AND INDUSTRIAL RELATIONSHIPS AT VOLKSWAGEN 1 (2002), [http://www.imfmetal.org/main/files/Sozialcharta\\_eng3l.pdf](http://www.imfmetal.org/main/files/Sozialcharta_eng3l.pdf) (declaring that fundamental social rights and principles are the basis of Volkswagen’s Corporate Policy).

26. ARCELOR, WORLDWIDE AGREEMENT ON THE PRINCIPLES OF ARCELOR’S CORPORATE SOCIAL RESPONSIBILITY 5 (2005), [http://www.imfmetal.org/main/files/0510111500347/IFA\\_FINAL\\_EN.pdf](http://www.imfmetal.org/main/files/0510111500347/IFA_FINAL_EN.pdf). BMW, JOINT DECLARATION ON HUMAN RIGHTS AND WORKING CONDITIONS IN THE BMW GROUP 3 (2005), [http://www.imfmetal.org/main/files/0505101759457/bmw\\_ifa\\_english.pdf](http://www.imfmetal.org/main/files/0505101759457/bmw_ifa_english.pdf) (“The BMW Group expects its business partners and suppliers to use these principles as a basis in their mutual dealings . . . .”); PRYM, DECLARATION ON THE SOCIAL RIGHTS AND INDUSTRIAL RELATIONS WITHIN THE PRYM GROUP 3 (July 7, 2004), [http://www.imfmetal.org/main/files/prym\\_ifa\\_eng.pdf](http://www.imfmetal.org/main/files/prym_ifa_eng.pdf) (“Prym supports and encourages its business partners, to consider this declaration in its own respective company policy.”).

27. MERLONI, STATEMENT OF AGREEMENT (Dec. 2001), <http://www.imfmetal.org/main/Files/01-177.pdf> (stating the implementation and compliance standards of Merloni with the ILO Convention).

28. Of course, some of this language could also be lost in translation.

29. RENAULT, RENAULT GROUP EMPLOYEES’ FUNDAMENTAL RIGHTS DECLARATION (Oct. 12, 2004), [http://www.imfmetal.org/main/files/ifa\\_renault\\_en.pdf](http://www.imfmetal.org/main/files/ifa_renault_en.pdf) (presenting fundamental principles of social responsibility that Renault believes are key to their long-term success).

30. See *infra* Table 2.

31. HOCHTIEF, HOCHTIEF CODE OF CONDUCT (Mar. 15, 2000), <http://www.ifbww.org/index.cfm?n=194&l=2&on=7> (requiring contractual partners to follow the conditions and standards of the International Labour Organization (ILO) in

it will only work with contractors, subcontractors, and suppliers that respect workers' rights.<sup>32</sup>

*B. IFAs Must at a Minimum Explicitly Include Internationally Recognized Labor Standards Such As Those Reflected in ILO Conventions.*

To be effective, an IFA must specifically incorporate explicit and comprehensive ILO standards that are embodied in its conventions, recommendations, and interpretive documents. These standards have been discussed frequently and are largely reflected by the ILO's Declaration on Fundamental Principles and Rights at Work.<sup>33</sup> They are also reflected by the multinational guidelines on enterprises as adopted by the Organization for Economic Cooperation and Development (OECD).<sup>34</sup>

Many corporations are familiar with these standards. Several years ago, representatives from government, business, labor, academia, and non-governmental organizations from the United States and Europe met at the Symposium on Codes of Conduct and International Labor Standards.<sup>35</sup> While there was much disagreement on many of the topics covered during the two days of discussions, the attendees all acknowledged that core labor standards should be "a starting point and a bare minimum."<sup>36</sup>

Most IFAs incorporate at least some reference to the basic core labor standards and principles, including those that concern: prohibitions on forced labor, equal pay, prohibitions on discrimination, prohibitions on

respect to the rights of HOCHTIEF employees).

32. IMPREGILO S.P.A., FRAMEWORK AGREEMENT BETWEEN IMPREGILO S.P.A. AND IFBWW (Nov. 4, 2004), <http://www.ifbww.org/index.cfm?n=219&l=2&on=7> (stating that Impregilo "considers the respect for workers [sic] rights to be a crucial element in sustainable development and will therefore engage only those contractors, subcontractors and suppliers which recognise and respect the criteria . . ." set forth in the agreement).

33. INT'L LABOUR ORG., ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, 86th Sess. (June 1998), [http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static\\_jump?var\\_language=EN&var\\_pagename=DECLARATIONTEXT](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT) (stating that members must uphold fundamental rights, including the freedom of association, collective bargaining, and the elimination of compulsory labor, child labor, and employment discrimination).

34. ORG. FOR ECON. CO-OPERATION AND DEV., THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (2000), <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (noting that members must "contribute to the effective abolition of child labor," "contribute to the elimination of all forms of compulsory labor," and abide by nondiscriminatory principals).

35. The first symposium was held in Brussels in February 1998, the second in Washington, D.C., in December 1998.

36. *Voluntary Codes*, *supra* note 1, at 352 (citing U.S. DEP'T OF LABOR, JOINT REPORT ON THE MAIN ISSUES EMERGING FROM THE US-EU SYMPOSIUM ON CODES OF CONDUCT AND INTERNATIONAL LABOR STANDARDS 5 (Sept. 1999)).

child labor, health, safety, lifelong learning, and the freedom of association and collective bargaining.<sup>37</sup> Some IFAs also include provisions concerning health and safety, decent pay, work-time, and maintaining a positive attitude toward unions.<sup>38</sup>

While most IFAs include at least some references to these principles, not all of them explicitly incorporate ILO Conventions and Recommendations.<sup>39</sup> Even fewer of them elaborate on the actual meaning of these standards.<sup>40</sup> Without a clear understanding of these fundamental human rights, IFA signatories could be on the road to serious misunderstandings when disputes under the IFAs arise. Indeed, some companies that sign IFAs will interpret them in the most minimum sense, often believing that IFA requirements are limited to national laws.

For most Global Union Federations and labor organizations, however, IFAs represent commitments that exceed standards set by national laws. For example Amicus the Union emphasizes:

[I]t is not enough to just include statements of principle in an IFA on core issues such as freedom of association, protection against child labour etc. Where standards outlined within the IFA have been taken from internationally recognised bodies (ILO, OECD, etc.) a clear reference must be made back to the original declaration/charter/treaty to allow for an effective assessment of the application of this principle against concrete, internationally recognised standards. The clearest example of this is in reference to the core labour standards as determined by the ILO. It is important that the actual ILO Convention numbers are included in the text of the IFA to ensure the accurate definition and application of these standards.”<sup>41</sup>

This is a fundamental issue that distinguishes IFAs from Codes of Conduct and, for labor groups, goes to the core of an IFA’s credibility. It makes little sense from a labor group’s perspective to negotiate an agreement with a company that sets forth standards that it is already required to honor through national law. Such an IFA would be tantamount to negotiating an agreement that obligates a corporation to obey already-existing laws.

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37. See, e.g., INT’L METALWORKERS’ FED’N, *supra* note 16, at 2-3; INT’L FED’N OF BUILDING AND WOOD WORKERS, *supra* note 19, at 2; Merloni, *Statement of Agreement*, *supra* note 17, (“[The Company] shall: be oriented toward promoting ‘positive action’ to support the principles of trade union freedom, organization of workers and collective bargaining.”); see also *infra* Table 2.

38. See, e.g., PSA PEUGEOT CITROEN, *supra* note 20; see also *infra* Table 2.

39. See *infra* Table 2.

40. *Id.*

41. Amicus the Union, *supra* note 10, at 6.

In countries such as China, where ILO standards are not recognized, an IFA's applicability regarding principles of freedom of association and rights to collective bargaining goes to the very heart of its success. After all, how can a corporation claim that it is honoring international labor standards when its IFA cannot be applied to one of the world's largest and fastest growing economies?

In other countries, such as the United States, where questions of freedom of association arise with respect to anti-union activities of companies, activities that may not violate U.S. Labor Law could arguably violate international labor standards.<sup>42</sup> Likewise, the correct interpretation of these labor standards covered by the IFA has profound implications as well.

In the United States an employer's conduct may arguably be lawful under U.S. law, but be in violation of international labor standards as reflected by ILO conventions and accompanying jurisprudence.<sup>43</sup> This raises a serious question: Are the standards covered by an IFA limited to national law, or do they exceed national law when international labor standards provide for greater protections? This fundamental question should be addressed in the IFA and a clear understanding should be reached prior to its execution. Without the resolution of matters concerning the breadth of national and international laws, it is almost inevitable that fundamental misunderstandings and conflicts will occur.

The critical nature of this point is exemplified by one IFA case that arose out of an organizing campaign in the United States.<sup>44</sup> The organizing drive was conducted by a North American union at a facility of a European-based company in the southern part of the United States. Prior to the commencement of this activity, the parent company entered into an IFA with one of the GUFs and its works council. The IFA covered subsidiaries of the company and the particular facility that was the subject of the organizing drive. In other words, the IFA clearly covered the right to organize and freedom of association.

Several weeks after the IFA was executed, the organizing campaign was underway. During the campaign, the subsidiary engaged in an anti-

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42. See Press Release, AFL-CIO, AFL-CIO Files International Complaint on Bush Labor Board's Sweeping Anti-Worker Decisions (October 25, 2007), available at <http://www.aflcio.org/mediacenter/prsptm/pr10252007.cfm> (announcing the filing of a complaint to the ILO Committee on Freedom of Association by the AFLC-CIO concerning the United States government's violations of freedom of association and collective bargaining by failing to enforce the National Labor Relations Act).

43. *Id.*

44. At the time of publication of this Article, this matter is still pending. As a consequence, the author wishes not to identify the name of the company involved. Documents pertaining to the case are on file with the author.

union campaign, complete with attacks on unions in general and the union that was engaged in organizing activities at its facility, specifically.

The union, which was aware of the IFA, quickly notified the Works Council about the company's conduct. The chair of the Works Council condemned the company's activities stating that, "In the opinion of both chairmen of the European Works Council (EWC), this action is a blatant breach of the content of our IFA".<sup>45</sup>

The company responded to the complaint almost one month later. In its response it did not dispute "the facts stated in [the] letter."<sup>46</sup> Rather, it noted that "the local executive management . . . underlines that they are compliant with legislation and with American practice."<sup>47</sup> The letter further noted:

[T]hus, the reaction of the local executive management . . . however surprising that might seem in Europe, is in line with the law and with American practices . . . . This obviously must cause us to think about the interpretation and conditions under which we apply the terms of our International Framework Agreement in countries where the social environment can differ greatly from that which we have in Europe . . . . The [company] adheres to the principles and values stipulated by the International Framework Agreement. It believes . . . that such application must be carried out while observing legal regulations, practices, and cultures within the countries welcoming our presence.<sup>48</sup>

The company's response raises several concerns about the IFA. The ability of the company to wage an anti-union campaign even for a short amount of time could have effectively killed the organizing campaign. It also raises serious questions for the future of the IFA. Does this mean that the company interprets its IFA as being limited to national law, while the worker representatives, who also serve as signatories, interpret the IFA as exceeding national laws when those laws do not reflect international standards?<sup>49</sup>

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45. Letter from the Chairman of the European Works Council to the Company, (Oct. 24, 2005) (Company and Works Council not identified due to active status of complaint, *see supra* note 44) (on file with author).

46. Letter from the Company to the Chairman of the European Works Council, (Nov. 11, 2005). (Company and Works Council not identified due to active status of complaint, *see supra* note 44) (on file with author).

47. *Id.*

48. *Id.*

49. For example, United States law permits the use of permanent striker replacements. However, the use of permanent striker replacements is arguably a violation of international labor standards. In response to a 1990 Complaint, filed by the AFL-CIO before the ILO Committee on Freedom of Association, that the use of permanent striker replacements had an impact on workers' freedom to exercise internationally recognized rights under international labor conventions, specifically the rights concerning the freedom of association

IFA models, like those issued by the IMF and BWI, specifically include ILO standards. They also elaborate on issues like freedom of association, referring to concepts like “neutrality” and requiring that companies adopt “positive” attitudes towards unions.<sup>50</sup>

Of the IMF’s IFAs examined, all but one, SKF, referenced ILO standards in at least some fashion.<sup>51</sup> One of them, DaimlerChrysler, went beyond mere references to ILO standards.<sup>52</sup> The DaimlerChrysler IFA contains a “neutrality” provision, but fails to provide any definition of “neutrality” or what company conduct is in accordance with “neutrality.”<sup>53</sup>

All ten of BWI’s IFAs had specific language regarding ILO standards, but only two of them went beyond mere reference to those standards. The Impregilo IFA stated that the company:

shall adopt a positive view of the activities of trade unions and an open attitude to their organi[z]ing activities. Impreglio S.p.A. therefore undertakes not to oppose efforts to unionize its employees and guarantees that workers representatives shall not be discriminated against and shall have access to all workplaces necessary to enable them to carry out their representative functions.<sup>54</sup>

While some may argue that IFAs cannot be customized to address labor relations in every country, failure to elaborate on labor standards and anticipate disputes jeopardizes the goal of IFAs—to improve workers’ rights *throughout* the world. After all, if an IFA offers no meaningful coverage to workers in countries like China, where national law falls below

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and the rights to collective bargaining, the committee concluded:

The right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests. The Committee considers that this basic right is not really guaranteed when a worker who exercises it legally runs the risk of seeing his or her job taken up permanently by another worker, just as legally. The Committee considers that, if a strike is otherwise legal, the use of labour drawn from outside the undertaking to replace strikers for an indeterminate period entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights.

COMPLAINT AGAINST THE GOVERNMENT OF THE UNITED STATES BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO), REP. NO. 278, CASE NO. 1543, para. 92, (1991), <http://www.ilo.org/ilolex/cgi-lex/single.pl?query=0319912781543@ref&chspec=03>.

50. INT’L METALWORKERS’ FED’N, *supra* note 16, at 2; INT’L FED’N OF BUILDING AND WOOD WORKERS, *supra* note 19, at 2.

51. *See infra* Table 2.

52. DAIMLER, SOCIAL RESPONSIBILITY PRINCIPLES OF DAIMLER CHRYSLER 2 (2002), <http://www.imfmetal.org/main/files/DC%20code%20in%20English.pdf>.

53. *Id.*

54. FRAMEWORK AGREEMENT BETWEEN IMPREGILO S.P.A AND IFBWW 2 (2004), [http://www.ifbww.org/files/ACC\\_Impregilo-engl.pdf](http://www.ifbww.org/files/ACC_Impregilo-engl.pdf).

international labor standards, or even the United States and other countries, where questions of international labor standards are raised, then the credibility and reliability of an IFA is threatened.

*C. IFAs Must Be Effectively Implemented.*

In order for an IFA to be effective, it must be implemented. Implementation involves two separate but related activities: communication and education.

With respect to communication, IFAs must be coherently written and translated for all levels of employees at an enterprise and its suppliers. This means that it must be written in easy-to-understand terms, translated into a variety of languages, and distributed throughout the world. Careful attention must be paid to the translation. Even slight variances in wording can lead to radical differences in meaning. Of course, dissemination of an IFA must also be accomplished immediately after an IFA is executed, if not before. Far too often, IFAs have been “released” but the actual workers who are to benefit from the IFAs are not aware of them for several weeks or even months after they are executed, if ever.<sup>55</sup>

Communication by itself, however, is not enough. Education is an essential component of the implementation process. After all, concepts such as freedom of association and collective bargaining are highly complex. Many employees and their managers will probably have had little exposure to these principles, let alone any real understanding of them. In order for an IFA to be at all effective, employees and managers, at all levels of an enterprise, must have a working understanding of the substance and procedures contained in the IFA. This education must be completed in a timely basis.

Few models or guidelines, such as those of the IMF or BWI, come close to adequately addressing this element.<sup>56</sup> While the term “distribution” of an IFA is referenced, no procedures are specified.

About half of the IFAs reviewed address “implementation,” but limit the provision to “distribution” in the various languages. For example, the BMW IFA states that, “contents of this joint declaration shall be disseminated with the BMW Group and in an appropriate manner.”<sup>57</sup> Others state that it will be distributed through “proper channels,”

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55. During a Conference on IFAs, hosted by the International Metalworkers' Federation in Frankfurt, Germany in November 2006, situations were discussed in which workers were not aware of IFAs for significant periods of time after they were executed. The author participated in this conference.

56. INT'L METALWORKERS' FED'N, *supra* note 16; INT'L FED'N OF BUILDING AND WOOD WORKERS, *supra* note 19.

57. JOINT DECLARATION ON HUMAN RIGHTS AND WORKING CONDITIONS IN THE BMW GROUP 3 (2005), [http://www.imfmetal.org/main/files/0505101759457/bmw\\_ifa\\_english.pdf](http://www.imfmetal.org/main/files/0505101759457/bmw_ifa_english.pdf).

“appropriate forms in accordance with local practice,” or made in a “suitable manner.”<sup>58</sup> Few IFAs include language requiring IFAs to be circulated to suppliers and suppliers’ employees. None of the IFAs reviewed specified any sort of comprehensive training program concerning the education of all personnel throughout the company on basic concepts like freedom of association and collective bargaining.

If an IFA’s contents and procedures are not understood by both management and workers, its effectiveness will be in serious doubt. Stated another way, if no one receives the IFA, no one will know of its existence and it will do little good. Even if workers receive an IFA in a timely fashion and in an accessible format, it will be of little value to any workers if no one understands—actually understands—what the labor standards mean. The reality is, concepts like freedom of association—the fundamental right to form one’s own union or to engage in collective bargaining—are not simple concepts. They are not simple for workers who live in places like the U.S. or Europe where collective bargaining is acknowledged in the law, let alone in countries like China, where exercising freedom of association can result in dramatic repercussions.<sup>59</sup>

#### *D. IFAs Must Be Effectively Enforced.*

Even if IFAs have proper coverage, content, and implementation, they are essentially ineffective and meaningless if enforcement is inadequately addressed. It is obvious that it does little good for employees to assert obligations under an IFA only to be left with a unilateral decision by the company refusing to honor its commitments. Indeed, if enforcement is not timely or does not represent a deterrent for socially irresponsible behavior, as defined by an adequate IFA, it will be useless for the workers it is intended to benefit. Likewise, if no adequate remedy exists or if the resolution is left in the hands of the employer, the perpetrator of the violation of the IFA, then workers will quickly see the futility of asserting any rights under the IFA and will see their rights and benefits as being hollow.

For enforcement to be effective, there must be a monitoring system which randomly inspects facilities. Monitoring is necessary for ensuring the integrity of the program. Enforcement must also provide adequate and timely remedies to employees asserting claims under an IFA. Of course,

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58. See *infra* Table 2.

59. See INTERNATIONAL TRADE UNION CONFEDERATION (ITUC), 2007 ANNUAL SURVEY OF VIOLATIONS OF TRADE UNIONS RIGHTS: CHINA (2007), <http://survey07.ituc-csi.org/getcountry.php?IDCountry=CHN&IDLang=EN>; Section 301 Petition of the American Federation of Labor and Congress of Industrial Organizations, Before the Office of the United States Trade Representative, at 55-68 (June 8, 2006).



all aspects of these activities must be transparent and accessible to workers covered by an IFA.

Effective monitoring enables experts who are well versed in the application of internationally recognized labor standards to determine if the IFA is being honored.

Monitoring systems can be internal and/or external to the company. Internal monitoring consists of personnel from the company appointed to form a monitoring group.<sup>60</sup> In order for this type of monitoring to have *any* integrity, the group must be familiar with international labor standards and their applications. Internal monitoring groups must also have equal participation from legitimate worker participants, such as union or works council representatives. The groups must also have adequate access to the inner workings of the companies they are monitoring and must be allowed to conduct random site visits. Among other things, internal monitors must have independence.

External monitoring is accomplished by utilizing outside experts who perform many of the same functions of an internal group. Unfortunately, some companies use outside “auditors” for such monitoring purposes. Like internal auditors, external monitors must be truly independent and must have working knowledge of the labor concepts reflected by international labor standards. The use of auditors who have little or no understanding of international labor standards does little to advance efforts at meaningful corporate social responsibility. It does even less to advance a program’s integrity.<sup>61</sup>

Only a handful of the IMF’s and BWI’s framework agreements contain references to monitoring. Almost all of these IFAs reference monitoring only in a general way.<sup>62</sup>

Moreover, it appears that some of them only contemplate annual oversight and not the type of monitoring that involves inspections of the company’s facilities and/or suppliers. Those IFAs that do make note of an inspection system are usually limited to internal monitoring. Only one

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60. See Herrnstadt, *supra* note 1, at 361 (“Internal monitoring is most common and, by its very nature, raises serious questions regarding its legitimacy. After all, internal monitors often have very strong ties to the company itself . . . questions remain regarding internal monitor’s expertise in terms of understanding and applying internationally recognized labor standards.”) (noting, Robert J. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights Through Private Initiatives*, 30 L. POL’Y & INT’L BUS. 111, 119 (1998)).

61. See *id.* (arguing that auditors are generally not useful because either they have a previous business relationship with the corporation that they are monitoring or they lack the requisite knowledge of labor laws and therefore resort to using formulaic questionnaires).

62. See, e.g., INTERNATIONAL FRAMEWORK AGREEMENT BETWEEN SCHWANHAUßER INDUSTRIE HOLDING GMBH & CO KG (STABILO) AND IG METAL 2 (2005) (“A monitoring Committee will monitor the implementation of this agreement . . . . The committee will meet once a year and will conduct monitoring every two years . . .”).

IFA, IKEA's, refers to the possibility of using outside groups for monitoring:

The IKEA Trading Service office has the direct responsibility to support and monitor the suppliers. To ensure compliance with the requirements, IKEA has also formed a global compliance and monitoring group in order to support and follow-up developments on a global basis. IKEA always reserves the right to check suppliers with the help of independent organisations.<sup>63</sup>

While monitoring assists signatories in determining when and where violations of an IFA occur, other enforcement mechanisms are needed to provide effective and timely remedies for violations.<sup>64</sup> Remedies could come in several different forms: monetary damages based on pre-set agreements, back pay and benefits, formal admissions, posting of notices, discontinuation of subcontracts, or withdrawal from the IFA, to name a few.<sup>65</sup> Regardless, determinations regarding remedies must be made under well-defined procedures, incorporating a dispute resolution mechanism such as binding arbitration which ensures above all, the reliability, predictability, and integrity of the program.

Enforcement might even take place through more informal programs that are not addressed by the IFA, including worker solidarity actions or public campaigns waged by those seeking an end to the IFA violation. It could also include withdrawal from the IFA by signatories who represent worker organizations.

The IFA model agreements of the IMF and BWI largely ignore language concerning most elements of enforcement. The lack of recognition of this crucial element by these GUFs is painfully apparent in almost all of their IFAs.

Indeed, few IFAs address enforcement in any significant fashion. For example, the Bosch IFA only says that complaints will be brought to the attention of the "Executive Committee of the Europa Committee."<sup>66</sup> Others, such as the DaimlerChrysler IFA, only refer to reports and

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63. *The IKEA Way on Purchasing Home Furnishing Products*, in BUSINESS AND HUMAN RIGHTS: A COMPILATION OF DOCUMENTS 385 (Radu Mares ed., Martinus Nijhoff Publishers 2004), available at <http://www.bwint.org/pdfs/iwayma.pdf> (last visited Sept. 17, 2007).

64. The ILO Committee on Freedom of Association notes that enforcement is essential for the implementation of these Conventions. There is a "need to provide expeditious . . . and wholly impartial means of redressing grievances. . . ." HECTOR BARTOLOMEI DE LA CRUZ ET AL., THE INTERNATIONAL LABOR ORGANIZATION: THE INTERNATIONAL STANDARDS SYSTEM & BASIC HUMAN RIGHTS 216-17 (1996).

65. Remedies for violating the ILO Conventions could include compensation as well as penalties, according to the ILO Committee of Experts. *Id.* at 218.

66. BOSCH, BASIC PRINCIPLES OF SOCIAL RESPONSIBILITY AT BOSCH 3 (2004), [http://www.imfmetal.org/main/Files/ifa\\_bosch\\_en.pdf](http://www.imfmetal.org/main/Files/ifa_bosch_en.pdf).

consultations with corporate management.<sup>67</sup> Only the EADS IFA mentions the acceptance of some form of a dispute resolution mechanism: "In a situation of conflict, the arbitration process will be mutually agreed by the EADS head of Human Resources and the European Works Council."<sup>68</sup>

The Bosch IFA serves as a good example of how an IFA may become ineffective if it does not include an adequate enforcement mechanism.<sup>69</sup> In November 2005, employees at the Bosch/Doboy facility in Richmond, Wisconsin went on strike.<sup>70</sup>

The IAM, the North American union which represented the Bosch workers, sent a letter to the IMF asking if the company's conduct concerning a variety of issues constituted a violation of the IFA.<sup>71</sup> (The IMF is a signatory to the Bosch IFA.) The IMF responded in the affirmative, and later stated that it was "demanding that German Bosch management responsible for implementing the IFA recognise that such an action is not in accordance with the IFA and prevent their US [sic] management from breaching it in this way."<sup>72</sup> The IMF's efforts did not resolve the situation.<sup>73</sup> Since there is no enforcement in the Bosch IFA mechanism, or for that matter, a neutral dispute resolution mechanism in the IFA, the dispute had nowhere to go after the matter was raised with the company. Now, bitter workers in Wisconsin have little confidence in the IFA, let alone the IMF and the Works Council that serve as the IFA's signatories.

Success stories about the effectiveness of IFAs are scant. The IMF touts one success involving a supplier in Turkey to DaimlerChrysler, Ditas:

67. DAIMLERCHRYSLER, SOCIAL RESPONSIBILITY PRINCIPLES OF DAIMLERCHRYSLER 4 (2002), <http://www.imfmetal.org/main/files/DC%20code%20in%20English.pdf>.

68. EUROPEAN AERONAUTIC DEFENSE AND SPACE COMPANY, INTERNATIONAL FRAMEWORK AGREEMENT 6 (2005), [http://www.imfmetal.org/main/files/05071112175266/IFA\\_EADS\\_eng.pdf](http://www.imfmetal.org/main/files/05071112175266/IFA_EADS_eng.pdf).

69. See INT'L METALWORKERS' FED'N, BACKGROUND TO INTERNATIONAL FRAMEWORK AGREEMENTS IN THE IMF 13 (2006), [www.imfmetal.org/main/files/06081513541679/Background\\_document\\_english-final.pdf](http://www.imfmetal.org/main/files/06081513541679/Background_document_english-final.pdf) ("At the Bosch World Conference held in Germany in 2006, a number of complaints were raised about company actions, some of which breach the IFA provisions on freedom of association and the right to collectively bargain, discrimination and the right to equal pay.").

70. *Id.*

71. Letter from R. Thomas Buffenbarger, IAM President, to Marcello Malentacchi, IMF General Secretary, (Nov. 22, 2005) (on file with author) (concentrating on disputed issues other than permanent replacement workers as this letter was written prior to the matter concerning replacements).

72. INT'L METALWORKERS' FED'N, BACKGROUND TO INTERNATIONAL FRAMEWORK AGREEMENTS IN THE IMF 13 (2006), [http://www.imfmetal.org/main/files/06081513541679/Background\\_document\\_english-final.pdf](http://www.imfmetal.org/main/files/06081513541679/Background_document_english-final.pdf) (disclosing later that a subsequent issue concerned the threatened use of permanent replacements).

73. *See id.*

In 2002, Ditas workers took industrial action because of the employer's refusal to respect trade union rights at the workplace and to bargain with the union, thus breaching ILO Conventions 87 on freedom of association and 98 on the right to organise and bargain collectively as well as the DaimlerChrysler IFA covering suppliers. A letter from the WEC to management about the breach played a significant role in a negotiated settlement being reached.<sup>74</sup>

While an IFA may have had "a significant role" in the success at Ditas, this matter may have more to do with the social dialogue that existed between the company and its Works Council than the IFA. Regardless, finding successes of IFAs are rare, as noted by the IMF: "Outside of DaimlerChrysler, few clear examples are available of breaches of an IFA being raised and resolved, either in the company itself or its suppliers."<sup>75</sup>

IFAs present entities representing workers with a unique mechanism to improve their lives through meaningful and effective corporate social responsibility. Negotiating IFAs, however, does carry certain risks. These risks are greater if all of the essential elements outlined previously are not adequately incorporated into the IFA. Indeed, for organizations that represent workers, an inadequate IFA may have many adverse results. By entering into an IFA, a worker organization puts its own credibility on the line. Failure to negotiate an effective IFA may raise questions regarding the worker organization's competence; questions that can cripple that organization in an organizing drive or in heated collective bargaining negotiations. Entering into an IFA may also raise an appearance of complicity with the very corporations who also serve as a signatory to an inadequate IFA. While it may be easy to blame a company for a failed code of conduct, a negotiated IFA that fails can just as easily be blamed on the worker organization that serves as a signatory to the agreement. This is compounded by modern communications, which allow the success or failure of an IFA to be learned by millions of people.

Another implication of a failed IFA is that it will sour any effort for future IFAs. After all, workers that think they will benefit from an IFA, but ultimately do not, will understandably be skeptical about any future IFA efforts.

In some cases, the negative effects of a failed IFA could have an even more profound impact on workers because they might actually be worse off with an inadequate IFA than without one. Some workers might undertake activities they believe are protected under the IFA only to learn that the IFA is powerless to protect them. Even if workers are not directly hurt by relying on an inadequate IFA, an inadequate IFA might provide the

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74. *Id.*

75. *Id.*

corporation with a public relations benefit that is not deserved. An inadequate IFA could also remove pressure on the corporation to honor international standards in the mistaken belief that the company is in compliance with the standards.

#### IV. CONCLUSION

The wave of programs advocating corporate social responsibility continues. As discussed in this Article, when it comes to the workplace, these programs often take the form of corporate codes of conduct. These codes, however, have been met with well-founded skepticism. They are frequently drafted and implemented solely by the corporation with little or no input from its workers. They often have limited coverage, excluding suppliers and contractors that are integral to the company. Additionally, standards reflected in codes are frequently weak. Few efforts at implementation have been made and provisions for meaningful enforcement have been omitted. In short, serious questions have been raised concerning the ability of corporate codes to achieve corporate social responsibility.

IFAs represent organized labor's response to corporate codes of conduct. This Article has examined the elements that are required to distinguish IFAs from codes. As mentioned, they should be negotiated, not unilaterally drafted, include the entire enterprise (e.g., suppliers and subcontractors), be based on internationally recognized labor standards, be implemented with adequate attention to communication and education and be enforced utilizing effective mechanisms for monitoring and resolving disputes.

This Article has also examined several IFAs. Since the IMF and BWI are two of the most active GUFs today with respect to IFAs, this review has focused on their IFAs.<sup>76</sup> Unfortunately, the article has found that none of the IFAs reviewed adequately address each of the foregoing essential elements. This raises serious concerns over the ability of current IFAs to succeed where corporate codes have failed.

Certainly, current IFAs are in much need of improvement. That said, IFAs do represent a bilateral attempt to achieve corporate social responsibility. And that, by itself, is a positive step. If the parties to these agreements are sincere about achieving corporate social responsibility, if they have the will to improve current agreements and if they adequately address the aforementioned essential elements, then there is hope that IFAs may lead to genuine corporate social responsibility in the not too distant future. Are IFAs a path to corporate social responsibility? If the key word

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76. Of course, other GUFs are also active in negotiating IFAs.

is “path” and it is understood that current IFAs represent just the beginning, the answer is *yes*.

TABLE 1\*

COMPANY	COUNTRY	GUF	YEAR
Danone	France	IUF	1988
Accor	France	IUF	1995
IKEA	Sweden	IFBWW	1998
Statoil	Norway	ICEM	1998
Faber-Castell	Germany	IFBWW	1999
Freudenberg	Germany	ICEM	2000
Hochtief	Germany	IFBWW	2000
Carrefour	France	UNI	2001
Chiquita	USA	IUF	2001
OTE Telecom	Greece	UNI	2001
Skanska	Sweden	IFBWW	2001
Telefonica	Spain	UNI	2001
Indesit (Merloni)	Italy	IMF	2002
Endesa	Spain	ICEM	2002
Ballast Nedam	Netherlands	IFBWW	2002
Fonterra	New Zealand	IUF	2002
Volkswagen	Germany	IMF	2002
Norske Skog	Norway	ICEM	2002
AngloGold	South Africa	ICEM	2002
DaimlerChrysler	Germany	IMF	2002
Eni	Italy	ICEM	2002
Leoni	Germany	IMF	2003
ISS	Denmark	UNI	2003
GEA	Germany	IMF	2003
SKF	Sweden	IMF	2003
Rheinmetall	Germany	IMF	2003
H&M	Sweden	UNI	2004
Bosch	Germany	IMF	2004
Prym	Germany	IMF	2004
SCA	Sweden	ICEM	2004
Lukoil	Russia	ICEM	2004
Renault	France	IMF	2004
Impregilo	Italy	IFBWW	2004
Electricité de France(EDF)	France	ICEM/PSI	2005
Rhodia	France	ICEM	2005
Veidekke	Norway	IFBWW	2005
BMW	Germany	IMF	2005
EADS	Netherlands	IMF	2005
Röchling	Germany	IMF	2005

COMPANY	COUNTRY	GUF	YEAR
Schwan-Stabilo	Germany	IFBWW	2005
Lafarge Group	France	BWI/ICEM	2005
Arcelor	Luxembourg	IMF	2005
PSA Peugeot Citroën	France	IMF	2006
Royal Bam Group	Netherlands	BWI	2006
Portugal Telecom	Portugal	UNI	2006
Securitas	Sweden	UNI	2006
Brunel	Netherlands	IMF	2007

\* This table is from the International Metalworkers' Federation website:  
<http://www.imfmetal.org/main/index.cfm?n=47&l=2&c=10266>.



TABLE 2: IMF AND BWI INTERNATIONAL FRAMEWORK AGREEMENTS

IFA	Coverage	Content	Implementation	Enforcement
Rochling: European Works Council, EMF, IMF (2004)	"[S]upports and expressly encourages its business partners to take into account the agreed—upon principles in their respective company policy."	ILO standards specifically referenced.	"[B]asic principles shall be made available to all managements, interest representatives and employees . . . in suitable form."	No monitoring No neutral dispute resolution mechanism.
Bosch: Europa Committee of the Bosch Group, IMF (2004)	"Bosch will not work with any suppliers who have demonstrably failed to comply with basic ILO labor standards."	ILO standards explicitly referenced.	Distribution through the Bosch Group.	No neutral dispute resolution mechanism. No monitoring.
Rheinmetall AG: European Works Council, EMF, IMF (2003)	"Rheinmetall AG supports and expressly encourages its business partners to take into account and apply the agreed guidelines in their own corporate policy."	ILO standards explicitly referenced.	"Principles will be made available in an appropriate form to the management, the worker's representatives, and employees of all operations throughout the group."	No neutral dispute resolution mechanism. No monitoring.
SKF: EMF, IMF (2003)	"Encourages its suppliers to adhere to similar codes of conduct."	ILO standards <i>not</i> referenced.	No provision on implementation.	No neutral dispute resolution mechanism. No monitoring.

IFA	Coverage	Content	Implementation	Enforcement
Volkswagen: Group Global Works Council – IMF (2002)	“supports and expressly encourages its contractors to take this declaration into account in their own respective corporate policy.”	ILO standards not explicitly referenced, although the ILO Conventions “concerned” are taken “into consideration.” “The real[is]ation of the following goals ensues under the consideration of applicable law and prevailing customs in the different countries and locations.”	“Employees . . . will be informed about all of the provisions of this declaration.”	No neutral dispute resolution mechanism. No monitoring.

IFA	Coverage	Content	Implementation	Enforcement
<p>Merloni: Elettrodomestici S.p.A, National RIM-FIOM- UILM, IMF (2002)</p>	<p>“Consideration shall be given to the adoption of the most appropriate instruments to ensure compliance with the ILO Conventions by direct suppliers.” With respect to ILO Conventions 29 and 138, the company “reserves the right to institute sanctions against . . . suppliers including for cases of serious violations, cancellation of the contract.</p>	<p>Explicit reference of ILO standards. “[B]e oriented toward promoting ‘positive action’ to support the principles of trade union freedom organization of workers and collective bargaining.”</p>	<p>“Shall provide full dissemination of and information on this Agreement in all its operational and commercial units.</p>	<p>No neutral dispute resolution mechanism. Monitoring referenced.</p>
<p>DaimlerChrysler: IMF (2002)</p>	<p>“[S]upports, encourages, and expects “its suppliers to incorporate these principles as a basis for relations with DaimlerChrysler.” “Regards the above as a favorable basis for enduring business relations.”</p>	<p>ILO Conventions not explicitly referenced. “principles” in general are referenced. “During organizing campaigns the company and the executives will remain neutral . . .”</p>	<p>IFA “will be made available to all employees.” Senior managers “will take appropriate measures in respect of implementation.”</p>	<p>No neutral dispute resolution mechanism. No monitoring.</p>

IFA	Coverage	Content	Implementation	Enforcement
Leoni: European Works Council, IMF (2002)	“Leoni supports and encourages its business partners to take this declaration into account in their own respective corporate policy.”	ILO Conventions referenced. “The realization of the following goals is effected with due consideration being given to the applicable law and prevailing customs obtaining in the different countries and locations.”	“These principles will be made available to all employees and their representatives in a suitable manner.”	“Internal auditing Department will monitor compliance with these principles and will include them in its audit-criteria.” No neutral dispute resolution mechanism.

IFA	Coverage	Content	Implementation	Enforcement
EADS: European Works Council, EMF, IMF (2005)	<p>“Compliance with EADS standards serves as a criterion for selecting suppliers.”</p> <p>Expects all its suppliers to recognize and apply the principles of this framework agreement and encourages them to introduce and implement principles in their own countries.”</p>	<p>ILO Conventions explicitly referenced.*</p> <p>“Committed to the <i>principle</i> of freedom of association . . . .”</p> <p>Concern for issue of industrial dialogue within the group to account for globalization and the development of its activities.</p> <p>*ILO 87/98 reaffirms importance of industrial dialogue and recognizes principles of freedom of association, rights to organize and collective bargaining ILO Conventions specifically referenced however, but respects right of all workers to elect their representatives wherever this right is stipulated by the law or local regulations.”</p>	<p>Employees “will be informed, either orally or in writing, of all the provisions of the framework agreement</p>	<p>Trade union or works council’s representatives may inform central management orally or in writing of any breach of one or more terms of the IFA provisions. The European Works Council may submit proposals for corrective measures.</p> <p>If there is a “conflict, the arbitration process will be mutually agreed by the EADS head of Human Resources and the European Works Council.”</p>

IFA	Coverage	Content	Implementation	Enforcement
Arcelor: IMF, EMF (2005)	Arcelor supports and encourages its contractors and suppliers to take this agreement into consideration in their own company policy.	ILO Conventions specifically referenced.	Signatories “undertake to jointly bring this agreement to the knowledge of all Group’s of employees.”	Monitoring referenced. No neutral dispute resolution mechanism.
BMW: EURO Works Council of the BMW Group, IMF (2005)	Business partners and “suppliers will be encouraged to introduce comparable principles . . . BMW Group expects its business partners and suppliers to use these principles . . . and regards them as a suitable criterion for lasting business relationships.”	ILO Conventions specifically referenced.	Disseminated within the BMW Group in an “appropriate manner.”	No neutral dispute resolution mechanism. No monitoring.

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Renault: IMF, Renault Group Works Council, FGTB, CFDT, CFTC, CGT, CC.OO, CSC, FO, UGT, CFE/CGC (2004)	The company “informs its own suppliers of the contents of this Declaration and the Global Compact and urges them to consider adhering to it . . . It encourages them to introduce and implement equivalent principles in their own companies.”	ILO Conventions specifically referenced.	IFA will be distributed to all the personnel of Renault Group companies.	No neutral dispute resolution mechanism. No monitoring.
PSA Peugeot Citroen: IMF, EMF (2006)	“Requires that its suppliers make similar commitments with regard to their respective suppliers and sub contractors.” “When requesting quotes from suppliers,” the company “agrees to ensure that compliance with human rights . . . is a determining factor in the selection of suppliers for the panel.”	ILO Conventions specifically referenced.	“Agrees to widely inform corporation employees about the content of this agreement.”	“[H]uman resource divisions and labour unions will monitor the . . . application of the . . . agreement on an annual basis . . .” “Any failure to comply with human rights requirements will result in a warning from [the company] . . .” “A specific process will also be implemented for small suppliers and subcontractors . . .”

IFA	Coverage	Content	Implementation	Enforcement
Prym: European Works Council, IMF (2004)	“Prym supports and encourages their business partners, to consider this declaration in their own respective company policy.	ILO Conventions specifically referenced.	“Employees of Prym are informed about all terms of this declaration in their corresponding national language.”	“The group management annually informs the EWC in its meeting on the reali[s]ation and will discuss together with the EWC on the procedure in case of violations. No monitoring. No neutral dispute resolution mechanism.
Faber-Castell and IFBWW (2000 and 1999)	Applies to “production and sales companies controlled by Faber-Castell . . .”	ILO Standards specifically referenced and elaborated	The Code of practice will be available at all workplaces in appropriate languages.	Monitoring committee referenced, includes worker representatives. “If production and sales companies do not observe the Code of Conduct the Monitoring Committee will review the matter and propose appropriate measures.” No neutral dispute resolution mechanism referenced.



IFA	Coverage	Content	Implementation	Enforcement
Ballast Nedam and IFBWW (2002)	“Requires that its contractual partners shall support this agreement and shall also ensure that it is adhered to by any of their contractual partners who are in anyway active in connection with the business activities of Ballast Nedam.”	ILO Conventions referenced but not specifically enumerated. However also states, “Ballast Nedam therefore requires of its own units and subsidiaries and of its contractual partners that they at least meet the requirements of national legislation . . . advocates the relevant conventions and recommendations of the ILO . . .”	“Employees of Ballast Nedam “will be informed orally and in writing of all of the stipulations of this agreement.”	No neutral dispute resolution mechanism referenced. No monitoring referenced.
Lafarge and IFBWW, ICEM and WFBW (2005)	“Lafarge will seek to use the services of those trading partners, subcontractors and suppliers, which recognize and implement the principles listed below.”	ILO Standards explicitly referenced.	“Will provide information concerning this agreement in written or verbal form in all countries where this agreement is applicable.”	No neutral dispute resolution mechanism explicitly referenced. No monitoring explicitly referenced..

IFA	Coverage	Content	Implementation	Enforcement
Schwan Stabilo and IG Metall and IFBWW (2005)	"[E]xpects of its suppliers to apply similar principles and regard this as being a basis for any enduring business partnership."	ILO Conventions explicitly referenced.	"This agreement will be published at all company locations in the workforce's respective language."	Monitoring Committee includes worker representation and "will conduct monitoring every two years at production and sales subsidiary locations . . ." No neutral dispute resolution mechanism referenced.

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Impregilo and IFBWW/Feneal-UIL/FILCA-CISL/FILLEA-CGIL (2004)	"Impregilo . . . will therefore engage only those contractors, subcontractors, and suppliers which recognize and respect the criteria listed above.	ILO Conventions explicitly referenced. The company "shall adopt a positive view of the activities of trade unions and an open attitude to their organizing activities . . . therefore undertakes not to oppose efforts to unionize its employees and guarantees that workers representatives shall not be discriminated against and shall have access to all workplaces necessary to enable them to carry out their representation functions."	Impregilo "will provide information concerning this agreement in both written and verbal form at all work sites."	No neutral dispute resolution mechanism explicitly referenced. Monitoring not explicitly referenced.

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Hochtief: BWI, IG BAU, Works Council (2002)	“Hochtief requires that its contractual partners shall support this Code of Conduct and shall also ensure that it is adhered to by any of their contractual partners who are in any way in connection with the business activity of Hochtief.”	ILO standards are referenced, but not specifically enumerated.	“Employees of Hochtief will be informed orally or in writing of all the stipulations of this Code of Conduct.”	No neutral dispute resolution mechanism is referenced. No Monitoring.
Royal BAM and BWI (2006)	“[C]ommits itself to work to achieve social justice and sustainable development in its activities and in the undertakings entered into with its trading partners, subcontractors, and suppliers.” “[R]efrain from using the services of those trading partners, subcontractors, and suppliers which do not respect the criteria listed above.”	ILO standards referenced.	Company “will provide information concerning this agreement in both written and verbal form.	No neutral dispute resolution mechanism. No monitoring explicitly referenced.

IFA	Coverage	Content	Implementation	Enforcement
IKEA and IFBWW (1998)	“Suppliers must comply with national laws and regulation and with international conventions . . .”	ILO standards referenced.	“[S]upplier shall effectively communicate to all its sub-suppliers, as well to its own co-workers, the content of the “IFA,” and ensure that all measures are implemented accordingly.”	Monitoring group formed. No neutral resolution mechanism referenced.
Viedekke: Fellesforbundet, Norsk Arbeidsmandsforbund, IFBWW (2005)	“[W]ill use its fullest influence in order to secure compliance with the principles set out in this agreement, also with its contractors, subcontractors, and suppliers.”	ILO standards specifically referenced. “The employer shall take a positive attitude to trade union activities, including organizing.” (sic.)	“[A]vailable at all workplaces . . . also made public on . . . website.”	Monitoring referenced. No neutral resolution mechanism.
Skanska and IFBWW (2001)	“[A]pply to all units and subsidiaries . . .”	“Employment conditions . . . shall meet the minimum requirements of national legislation relevant to ILO conventions and recommendations . . . shall be respected.” ILO conventions specifically referenced.	“[A]greement . . . announced at company worksites in the respective languages . . .”	Monitoring committee referenced. Neutral dispute resolution mechanism (arbitration) referenced.

IFA	Coverage	Content	Implementation	Enforcement
Brunel and IMF (2007)	“Brunel agrees to promote compliance with human rights in all countries in which the corporation is present, including in geographical areas where human rights are not yet sufficiently protected.”	ILO conventions specifically referenced. “Brunel has a positive attitude to trade union membership and will facilitate union access for the purpose of organising trade union membership.”	“Brunel agrees to widely inform corporation employees about the content of this agreement.”	No neutral dispute resolution mechanism referenced. No monitoring referenced.